

MODIFYING SEMI-AUTOMATIC FIREARMS  
or "What can I do to my SKS rifle?"

09/06/98

DISCLAIMER: What is here is correct to the best of my knowledge, as of the date listed. If you have a more specific question I urge you to take it up with BATF-Technology Branch, and/or an attorney. This is a rather nebulous and gray area of the law. Be warned.

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Many federal rules govern modifications to firearms, it is quite possible to inadvertently modify a firearm from a legal configuration to an illegal one. The focus of this faq will be on modifications to semi-automatic firearms, particularly so called "assault weapons". You may also modify any firearm into one regulated by the National Firearms Act (NFA), for info on that see my faq on class 3 weapons. I will not be covering modifications that might bring a gun under any of the myriad of state and local laws regulating or banning semi-auto firearms. For local laws, check locally.

Two federal laws govern modifications to semi-auto firearms. 18 U.S.C. section 922(r), governs "assembly" in the USA of semi-auto rifles and shotguns out of imported parts. 18 U.S.C. section 922(v) bans the making of various "semiautomatic assault weapons" for civilian possession, as well as civilian possession of such guns, after the effective date of the law, (9/13/94). Both are part of the Gun Control Act (GCA), as amended. The GCA and NFA are where nearly all federal gun control laws are located.

First, a brief note about the laws. In terms of federal gun regulation, there are two sources of the rules. One is the laws (statutes) passed by Congress. Second is regulations made up by the executive branch agency charged with enforcing the law, given by Congress the power to fill in the nooks and crannies of the laws. See 18 U.S.C. section 926, for the grant of authority to the Secretary of the Treasury to make regulations for enforcing the GCA. The BATF is an arm of the Dept. of the Treasury.

The laws are codified in the United States Code (U.S.C.). The regulations are published in the Code of Federal Regulations (CFR). Unless the regulation is overturned by the courts, and the courts are very lenient in reviewing the validity of regulations, they have the force of law. The BATF, in particular, has a very bad habit of not publishing some of their regulations, as they are

supposed to, but having them be essentially a secret, and requiring you ask them about what they think the law means. This is particularly true with the rules about what is a "sporting use" for purposes of import. This sort of policy lets them escape the public comment requirements of making a formal rule, and allows them to change the rules without public notice, or having to justify the change. The best source for what the feds have written about the laws and their implementation is the publication, "Federal Firearms Regulations Reference Guide" ATF P 5300.4 (10-95). This replaces the old ATF "Red Book" guide to federal gun laws and regulations, and includes the text of the Crime Bill and the interim regulations. As it has a yellow cover, I will call it the "Yellow Book". It is free for the asking from ATF.

18 U.S.C. section 922(r)

This law was enacted after BATF used its power, under the Gun Control Act to approve weapons for import, to end the import of some semi-auto long guns that looked like assault rifles, or machine guns, in 1989. See "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles", July, 1989. Immediately after, folks discovered they could legally avoid this by making the receivers here, and import the now banned guns as parts kits (all parts but the receiver). In particular a company from Tucson, Arizona known as B-West began to make AK receivers here and assemble them with Chinese AK parts kits, in the regular pre-ban configuration. Thus what had been a new rule from BATF (the import ban) was enacted into law, to stop the domestic making of evil semi-auto long guns out of imported parts. In making regulations to implement this law BATF ignored that aspect of the law's history, and first announced a regulation that a rifle or shotgun would need to only have more than one imported part to be covered by this law, rather than be wholly made out of imported parts. In the face of protest during the comment period, organized in part by the NRA, BATF relented, and rewrote the regulation, (see it below) deciding a semi-auto rifle or shotgun needed to have 11 or more of the parts on a list to be subject to section 922(r), that is to be considered "imported".

The law - 18 U.S.C. section 922(r)

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to -

- (1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States

or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or  
(2) the assembly of any such rifle or shotgun for the purposes  
of testing or experimentation authorized by the Secretary.

However, just when you think that means what it says, BATF has also decided, in making the regulation implementing section 922(r), that "identical" means similar, and not identical. Put another way, read the law to say; it is illegal for anyone to assemble a semi-auto rifle or shotgun domestically that would be prohibited from import were import attempted, out of imported parts. The law (P.L. 101-647) took effect on November 30, 1990. Repair to rifles so "assembled" before that date are OK, assembly on or after that date is not, regardless of when the rifle was imported. Thus in order to legally modify your SKS rifle in a way that would make it prohibited from import, you need to have done that before the law took effect. Regardless of when it was imported, you may not modify it, legally, anymore, unless you add enough US made parts to have it be considered US made under the regulation.

Section 922(r) applies to guns not covered by the Crime Bill's ban on "semiautomatic assault weapons", for example an SKS rifle that uses a fixed magazine. And it does not apply to pistols, while the Crime Bill does. Section 922(r) does not cover weapons subject to the National Firearms Act, if you register a weapon as a short barreled rifle, for example, you may assemble it out of all imported parts, into a bad configuration, and ignore section 922(r). This is because section 922(r) does not cover weapons that are imported under a different provision of law than section 925(d)(3). NFA weapon import is regulated not in the GCA, but in the NFA, 26 U.S.C. section 5844. Also military Curio and Relic semi-auto long guns, like the Russian SKS, are not imported pursuant to section 925(d)(3), but rather pursuant to section 925(e)(1). Thus they can have a bayonet, while the non C&R Chinese SKS cannot. Likewise, Russian SVT-40 rifles came in, even though they took a detachable mag and had a bayonet lug and flash hider. In fact BATF has ruled that if the gun is not in its original military configuration (like a stripped receiver, or sporterized) it is no longer a C&R gun, and cannot be imported as such, but would have to meet the "sporting" test required for import under 18 U.S.C. section 925(d)(3). See ATF Ruling 85-10.

Also be aware that you are not allowed one bad feature on an imported gun, under section 922(r); while it may not become a "semiautomatic assault weapon" (and violate section 922(v), below) if you put a pistol grip stock set on your MAK-90 rifle, it will have been assembled in violation of section 922(r); unless its parts content is less than 11 of the listed parts being imported,

all the rest being USA made.

Note also that section 922(r) only bans "assembly", it is not a crime to possess a weapon "assembled" in violation of this section. However it may be subject to seizure and forfeiture, under some circumstances, if ATF can show it was assembled in knowing or willful violation of the Gun Control Act, under 18 U.S.C. section 924(d) (1), by clear and convincing evidence.

To see which imported parts are naughty on a domestic firearm (11 or more) take a look at the regulations BATF created to implement 18 U.S.C. section 922(r). They can be found at 27 CFR section 178.39, or at 58 Fed. Reg. 40587 (July 29, 1993). The regulation is as follows:

27 CFR section 178.39

(a) No person shall assemble a semiautomatic rifle, or any shotgun, using more than 10 of the imported parts listed in paragraph (c) of this section if the assembled firearm is prohibited from importation under section 925(d) (3) as not being particularly suitable for or readily adaptable to sporting purposes.

(b) The provisions of this section shall not apply to:

- subdivision
- (1) The assembly of such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof, or to any State or any department, agency, or political
- thereof; or
- (2) The assembly of such rifle or shotgun for the purposes of testing or experimentation authorized by the Director under the provisions of section 178.151; or
- (3) The repair of any rifle or shotgun which had been imported into or assembled in the United States prior to November 30, 1990, or the replacement of any part of
- such
- firearm.

(c) For purposes of this section, the term imported parts are:

- (1) Frames, receivers, receiver castings, forgings or stampings
- (2) Barrels
- (3) Barrel extensions
- (4) Mounting blocks (trunions)
- (5) Muzzle attachments
- (6) Bolts
- (7) Bolt carriers
- (8) Operating rods
- (9) Gas pistons

- (10) Trigger housings
- (11) Triggers
- (12) Hammers
- (13) Sears
- (14) Disconnectors
- (15) Buttstocks
- (16) Pistol grips
- (17) Forearm handguards
- (18) Magazine bodies
- (19) Followers
- (20) Floorplates

Thus you can put an imported flash hider on your Colt AR-15  
A2

HBAR Sporter, even though that is a configuration that would be banned from import, as the gun is otherwise domestically made. The regulation was re-written to allow exactly this, after a first draft was put in the Federal Register (the initial proposed rulemaking can be found at 56 Fed. Reg. 41105, August 19, 1991). You could also use an imported magazine in your Colt gun, even though that has three parts, according to the list.

But, if you want to build using all imported parts except the receiver, or including the receiver (by altering a whole imported rifle), you will have to make it in a configuration that BATF would allow for import; i.e., a "sporting" configuration. You can ask the Technology Branch of BATF what would be allowed. This question is not answered by section 922(r) or the regulations, BATF seems to be perpetually changing what is OK on an imported semi-auto and what is not. They haven't made regulations about it, it seems to be pretty fluid.

Some guidance as to SKS's can be gleaned from this letter to the NRA from BATF Technology Branch, printed in the NRA magazine, American Rifleman May, 1994, p.44:

From: Dept. Of Treasury  
BATF  
Wash. DC  
To: [name deleted]  
NRA  
11250 Waples Mill Road  
Fairfax, VA.

Dear Sir:

[Snip] In answer to your specific questions, the following modifications of an SKS type rifle WOULD \_NOT\_ BE A VIOLATION of Section 922 (r):

1. Replace the existing stock and handguard with a non-folding wooden or synthetic stock having either a Monte Carlo or thumbhole design.

2. Attach a muzzle mounted recoil compensator, provided that the device is not also designed as a flash suppressor.

3. Replace the standard configuration stock with a Monte Carlo or thumbhole style stock and replace the fixed magazine with a detachable magazine. THIS MODIFICATION MAY BE DONE PROVIDED THAT THE BAYONET MOUNT IS COMPLETELY REMOVED FROM THE RIFLE.

4. Replace the existing 10 round magazine with a fixed magazine of a larger capacity.

5. Replace the existing 10 round magazine with a fixed 5 round magazine or install a block in the well of the 10 round fixed magazine to limit its capacity to 5 rounds.

6. Replace the existing receiver cover with a cover having a telescopic sight based and/or rings.

7. Replace the front and/or rear sight or install an ambidextrous safety.

With respect to attaching a bipod to a standard configuration SKS rifle; standard configuration SKS rifles are not approved for importation with bipods. Therefore, the attachment of a bipod would be a violation of Section 922(r).

END QUOTE

Additionally, here is a letter received from BATF Technology Branch, Jan. 1995.

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DEPARTMENT OF THE TREASURY  
Bureau of Alcohol, Tobacco and Firearms  
Washington, D.C. 20226

JAN 31, 1995

E:CE:F:TE:CHB  
3310.0

Address  
City, State

Dear

This refers to your letter of December 27, 1994, in which you ask about modifications to a Russian SKS rifle.

Title 18, United States Code, section 922(r) provides that it shall be unlawful for anyone to assemble from imported parts any semiautomatic rifle or shotgun which is identical to any rifle or

shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable or readily adaptable to sporting purposes ....

A Russian SKS rifle in original military configuration, having a bayonet lug and bayonet, fixed stock, and non-detachable 10 round magazine, which was modified by threading the barrel for a firearm silencer, would not be in violation of section 922(r). Assembly of certain other components such as a folding stock or detachable magazine, which would prohibit the firearm from importation, would be in violation of section 922(r).

SKS rifles which do not have an ability to accept a detachable magazine are not semiautomatic assault weapons as defined in 18 U.S.C. section 921(a)(30) and they are not subject to the provisions of 18 U.S.C. section 922(v).

We trust that the foregoing has been responsive to your inquiry. If you have any further questions concerning this matter, please contact us.

Sincerely yours,  
[signed]  
Edward M. Owen, Jr.  
Chief, Firearms Technology Branch  
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The July, 1989 ATF Report, which explains why ATF decided that military style semi-auto rifles were "unsporting" and thus prohibited from importation (for sale to civilians, anyway), lists the criteria they considered important:

1. "Military configuration", which consists of: accepting a detachable magazine, having a folding or telescoping stock, having a pistol grip that protrudes conspicuously beneath the stock, ability to accept a bayonet, having a flash suppressor, having a bipod, having a grenade launcher, and having night sights.
2. Whether the gun is a semiautomatic version of a machine gun.
3. Whether the rifle is chambered for a cartridge shorter than 2.25 inches.

The fact that it has or doesn't have a particular feature will not determine its suitability for import. The report says the rifle must be judged in its totality to see if it is more like a sporting rifle type, or a semiautomatic assault weapon type. While the report does not include threaded muzzles as a feature of the semiautomatic assault weapon type (which is what they were banning, a type, not just particular rifles, that individually might have a sporting use) that is apparently no longer acceptable,

at least on rifles using a detachable magazine. Likewise while the report indicates that the semiautomatic assault weapon type uses a detachable magazine, ATF has issued decrees related to the SKS with fixed magazine, as well as with a detachable magazine.

On April 6, 1998, ATF announced that the temporary ban on importing most "sporting" thumbhole stocked semi-automatic rifles, which was imposed on November 15, 1997, is now permanent. The basis for this new ban is yet another re-interpretation of what is a "sporting" firearm. ATF has decided that the ability of a semi-automatic rifle to take a "large capacity military magazine"

(LCMM)

is an unsporting feature. A LCMM is defined by ATF as a detachable

large capacity magazine that was originally designed and produced for the military assault rifle from which the semi-automatic rifle was derived. This is in addition to the features previously listed

in ATF's 1989 report. Thus any semi-automatic rifle which can take

a military magazine is no longer importable for general sale. ATF wrote a second, long report justifying this sudden re-interpretation of what constitutes a "sporting firearm", which is available on the ATF WWW page. The URL for the report, in Adobe PDF format, is:

[http://www.atf.treas.gov/pub/assault\\_rifles/complete.pdf](http://www.atf.treas.gov/pub/assault_rifles/complete.pdf).

A lot of people wonder about what effect this change will have on the application of section 922(r).

Some people have thought that since thumbhole stocked semi-automatic weapons that accept a detachable military magazine are now also unimportable, it doesn't matter (as to importability) whether the firearm has a thumbhole stock or a separate pistol grip

and buttstock. Therefore, this new decision means that all imported, semi-automatic, thumbhole stocked firearms may have "pre-

ban" style furniture added to them. Unfortunately, the section 922(r) doesn't say that a currently unimportable firearm is exempt from the law. It prohibits assembling an unimportable firearm from

imported parts, without regard to whether the parts, or the firearm

being assembled, were already in an unimportable configuration or not. This also appears to be ATF's interpretation of the law.

Mr.

Wesley Drennan, of Soup Bowl Enterprises received the following letter, dated May 11, 1998, from ATF Firearms Technology Branch on this issue:

This refers to your letter of April 13, 1998, in which you ask about modifications to certain semiautomatic rifles.



Title 18, United States Code (U.S.C.) section 922(r) prohibits assembly of certain semiautomatic rifles from imported parts. The implementing regulation in Title 27, Code of Federal Regulations, part 178, section 178.39, provides that no person shall assemble a semiautomatic rifle using more than 10 of imported parts listed in paragraph (c) of this section if the assembled firearm is prohibited from importation under section 925(d) (3) as not being particularly suitable for or readily adaptable to sporting purposes.

Certain firearms including the MAK 90 semiautomatic rifle were prohibited from importation, on April 6, 1998, and they cannot now be assembled from imported parts as provided in the cited sections. Such firearms which were imported or assembled prior to April 6, 1998, in compliance with the cited section may still lawfully be possessed.

Adding a pistol grip and buttstock to a MAK 90 rifle using more than 10 imported parts would still constitute assembly of a semiautomatic rifle subject to the provisions of 18 U.S.C. section 922(r) and 27 CFR section 178.39.

Adding a thumbhole stock to an AK style semiautomatic rifle using more than 10 imported parts would now also constitute assembly of a semiautomatic rifle subject to the cited sections.

A MAK90 style rifle having a thumbhole style stock with a pistol grip, but none of the other features listed in the definition of a semiautomatic assault weapon in 18 U.S.C. section 921(a) (30) (B), would not meet the definition of a semiautomatic assault weapon. The "grandfather" exemption in 18 U.S.C. section 922(v) (2) applies only to a semiautomatic assault weapon which was lawfully possessed on the date of enactment of the statute. A rifle which did not meet the definition of a semiautomatic on September 13, 1994, does not qualify for this exemption. A firearm which became a semiautomatic assault weapon after September 13, 1994, is subject to the prohibition in section 922(v).

We trust that the foregoing has been responsive to your inquiry. If you have further questions concerning this matter, please contact us.

Sincerely yours,

Curtis H.A. Bartlett  
Acting Chief, Firearms Technology Branch

The only exception to this rule about modifying an

unimportable, imported, semi-automatic rifle was made up by ATF in their implementing regulation (27 CFR section 178.39). Firearms otherwise subject to the law (that is in an unimportable configuration) which were either imported into or assembled in the United States before 922(r) took effect on November 30, 1990 are grandfathered. Those otherwise unimportable firearms may be repaired or have parts replaced.

From the above, and from what semiautomatic rifles allowed for import actually look like, the following general rules can be gleaned:

If the gun is a rifle of the sort subject to section 922(r) (imported, semi-auto) that accepts a detachable magazine it may not have:

- \* pistol grip (it may have a thumbhole stock)
- \* flash hider or threaded muzzle (a sporting muzzle brake is OK)
- \* bipod (a sporting bipod is probably OK, one that clamps on, or attaches by a swivel stud, and is not permanently attached to the gun)
- \* bayonet lug
- \* folding or collapsing stock
- \* night sights (luminescent sights)
- \* grenade launcher
- \* threaded muzzle (except permanently covered by a nut, or something similar)
- \* After April, 1998, it may not take a large capacity military magazine

If the rifle does not accept a detachable magazine (for instance an SKS) it is subject to the above restrictions, except that it can have the bayonet lug intact on the gun, but not the bayonet. It is also OK for it to have a threaded muzzle.

Of course the above does not help to explain the variation in what ATF has allowed to be imported. Yugoslav made M70 AK style rifles caught in Customs by the 1989 ban were allowed in (renamed M90) with threaded muzzles with flash hidere, with the flash hider retaining pin fixed in place. The bayonet lug was removed, and the gun was supplied with a rather unusable thumbhole stock. Norinco AK74 style rifles in .223 caliber also apparently caught in Customs were allowed in with an AK74 muzzle brake on a threaded muzzle, with the spring loaded retaining pin fully functional. Galil AR rifles, in .223 caliber, apparently trapped in Customs, were allowed in with a heinous thumbhole stock, and a thread protector covering the muzzle threads, not welded, soldered, glued or mechanically attached to the gun in any way. On the other hand, some Norinco MAK-90 rifles had part of the rear of the receiver cut away, so as to make it hard for the (stamped) receiver to support a conventional shoulder stock, should the thumbhole stock be

removed, to be replaced with a regular AKM stock set. Hungarian AKM rifles were not so altered, nor were other Norinco rifles.

This ruling does not affect what is probably the easiest way to avoid section 922(r), replacing enough parts on the imported weapon with U.S. made parts so as to have it no longer be considered "imported". There is a list of parts that count toward this in the ATF regulation at 27 CFR 178.39. As long as the firearm has an imported parts content of ten or fewer of the listed parts, it is not considered to be imported. Several makers, including Soup Bowl Enterprises, offer kits of U.S. made parts for imported semi-automatic rifles, so that the completed firearm is no longer considered to be an imported firearm, and is thus not subject to section 922(r).

Thus, if the gun came with a thumbhole stock it is unlikely it is legal to remove that and replace it with a pistol grip and shoulder stock set you bought at a gun show or through Shotgun News. If the rifle were importable in that configuration, the importer would have brought the gun in that way. This law only prohibits assembly, nothing prohibits you from buying that stock set for your thumbhole MAK-90 and squirreling it away for a rainy day, or when saner heads prevail and this sort of BS is repealed.

#### The Crime Bill.

In terms of weapon modification there are three important amendments to the GCA in the Crime Bill; 18 U.S.C. section 922(v), creating the new crime of possessing or making a semiautomatic assault weapon, 18 U.S.C. section 921(a)(30), defining semiautomatic assault weapon, and 18 U.S.C. section 923(i) adding a requirement that semiautomatic assault weapons be marked with the date of making. The laws and temporary regulations are reproduced below. The regulations were proposed by ATF in the April 6, 1995 Federal Register, pages 17446-17456. The regs implement all of the changes in the Crime Bill; only those related to "semiautomatic assault weapons" are reproduced below.

First, the law and regs on the crime itself.

#### 18 U.S.C. sec 922(v)

- (1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.
- (2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under Federal law on the date of the enactment of this subsection.
- (3) Paragraph (1) shall not apply to-
  - (A) any of the firearms, or replicas or duplicates of

the

firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

(B) any firearm that-

(i) is manually operated by bolt, pump, lever, or slide action;

(ii) has been rendered permanently inoperable; or

(iii) is an antique firearm;

(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine.

The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1)

applies

to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this

subsection

is in effect.

(4) Paragraph (1) shall not apply to-

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the

United

States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession

by

a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system

and

security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of

nuclear

materials;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.

The regulations; ATF has divided the regs for this section into several separate sections, and mixed this in with the regulation of

mags and other things that hold 10+ rounds, and were made after the law took effect.

27 CFR Section 178.40 Manufacture, transfer, and possession of semiautomatic assault weapons.

(a) Prohibition. No person shall manufacture, transfer, or possess a semiautomatic assault weapon.

(b) Exceptions. The provisions of paragraph (a) of this section shall not apply to:

- (1) The possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed in the United States under Federal law on September 13, 1994;
  - (2) Any of the firearms, or replicas or duplicates of the firearms, specified in 18 U.S.C. 922, Appendix A, as such firearms existed on October 1, 1993;
  - (3) Any firearm that--
    - (i) Is manually operated by bolt, pump, lever, or slide action;
    - (ii) Has been rendered permanently inoperable; or
    - (iii) Is an antique firearm;
  - (4) Any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition;
  - (5) Any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine;
  - (6) The manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement;
  - (7) The transfer to a licensee under title I of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;
  - (8) The possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement;
  - (9) The manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation as authorized by the Director under the provisions of Section 178.153; or
  - (10) The manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer, licensed importer, or licensed dealer for the purpose of exportation in compliance with the Arms Export Control Act (22 U.S.C. 2778).
- (c) Manufacture and dealing in semiautomatic assault weapons.

Subject to compliance with the provisions of this part, licensed manufacturers and licensed dealers in semiautomatic assault weapons may manufacture and deal in such weapons manufactured after September 13, 1994: Provided, The licensee obtains evidence that the weapons will be disposed of in accordance with paragraph (b) of this section. Examples of acceptable evidence include the following:

- (1) Contracts between the manufacturer and dealers stating that the weapons may only be sold to law enforcement agencies, law enforcement officers, or other purchasers specified in paragraph (b) of this section;
- (2) Copies of purchase orders submitted to the manufacturer or dealer by law enforcement agencies or other purchasers specified in paragraph (b) of this section;
- (3) Copies of letters submitted to the manufacturer or dealer by government agencies, law enforcement officers, or other purchasers specified in paragraph (b) of this section expressing an interest in purchasing the semiautomatic assault weapons;
- (4) Letters from dealers to the manufacturer stating that sales will only be made to law enforcement agencies, law enforcement officers, or other purchasers specified in paragraph (b) of this section; and
- (5) Letters from law enforcement officers purchasing in accordance with paragraph (b) (6) of this section and Section 178.132.

Section 178.132 Dispositions of semiautomatic assault weapons and large capacity ammunition feeding devices to law enforcement officers for official use.

Licensed manufacturers, licensed importers, and licensed dealers in semiautomatic assault weapons, as well as persons who manufacture, import, or deal in large capacity ammunition feeding devices, may transfer such weapons and devices manufactured after September 13, 1994, to law enforcement officers with the following documentation:

- (a) A written statement from the purchasing officer, under penalty of perjury, stating that the weapon is being purchased for use in performing official duties and that the weapon is not being acquired for personal use or for purposes of transfer or resale; and
- (b) A written statement from a supervisor of the purchasing officer, under penalty of perjury, stating that the purchasing officer is acquiring the weapon for use in official duties, that the firearm is suitable for use in performing official duties, and that the weapon is not being acquired for personal use or for purposes of transfer or resale.

Section 178.133 Records of transactions in semiautomatic assault weapons.

The evidence specified in Section 178.40(c), relating to transactions in semiautomatic assault weapons, shall be retained in the permanent records of the manufacturer or dealer and in the records of the licensee to whom the weapons are transferred.

Section 178.153 Semiautomatic assault weapons and large capacity ammunition feeding devices manufactured or imported for the purposes of testing or experimentation.

The provisions of Section 178.40 with respect to the manufacture, transfer, or possession of a semiautomatic assault weapon, and Section 178.40a with respect to large capacity ammunition feeding devices, shall not apply to the manufacture, transfer, or possession of such weapons or devices by a manufacturer or importer for the purposes of testing or experimentation as authorized by the Director. A person desiring such authorization shall submit a letter application, in duplicate, to the Director. Such application shall contain the name and addresses of the persons directing or controlling, directly or indirectly, the policies and management of the applicant, the nature or purpose of the testing or experimentation, a description of the weapons or devices to be manufactured or imported, and the source of the weapons or devices. The approved application shall be retained as part of the records required by Subpart H of this part.

Section 178.171 Exportation.

\* \* \* Licensed manufacturers and licensed importers exporting armor piercing ammunition and semiautomatic assault weapons manufactured after September 13, 1994, shall maintain records showing the name and address of the foreign consignee and the date the armor piercing ammunition or semiautomatic assault weapons were exported.

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This law establishes the crime of possessing a semiautomatic assault weapon, and importantly exempts from that any such weapons made and lawfully possessed before the law took effect. Thus any such weapon made before hand is grandfathered. The primary point of the regulations is to make concrete rules for the application of the exceptions to the law. "Manufacture" is not currently defined in the GCA or in the regulations; ATF regulations purporting to define the word were struck down as inconsistent with the statute. See National Rifle Ass'n v. Brady, 914 F.2d 475, note 2 (4th Cir. 1990).

Note that section 922(v) does not prohibit the import of semiautomatic assault weapons. However all such weapons are illegal to have, unless they were lawfully possessed under federal

law on 9/13/94. In the regulations ATF is taking the position that the weapon had to have been in the USA to be grandfathered, as well as have been made before the law took effect.

Also note the only other way for a civilian to have a semiautomatic assault weapon, besides a grandfathered one, is one presented to a retired law enforcement officer by his agency. This could be a post-ban one, marked with a date of manufacture, one that would otherwise be illegal for a civilian to have. Can such a person treat it as his personal property, and sell it, or leave it to his heirs when he dies? If not, as the law seems to suggest, is such a restriction on personal property a constitutional "taking"? One solution is if the gun is deactivated anyone may own it at that point; if it is welded up. Another solution is to remove from the guns enough of the evil features, so that it is no longer an assault weapon.

Next, the definition of the banned object.

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18 U.S.C. section 921(a)

(30) The term "semiautomatic assault weapon" means-

(A) any of the firearms, or copies or duplicates of the firearms in any caliber, known as-

- (i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);
- (ii) Action Arms Israeli Military Industries UZI and Galil;
- (iii) Beretta Ar70 (SC-70);
- (iv) Colt AR-15;
- (v) Fabrique National FN/FAL, FN/LAR, and FNC;
- (vi) SWD M-10, M-11, M-11/9, and M-12;
- (vii) Steyr AUG;
- (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and
- (ix) revolving cylinder shotguns, such as (or similar

to)

the Street Sweeper and Striker 12;

(B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of-

- (i) a folding or telescoping stock;
- (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
- (iii) a bayonet mount;
- (iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and
- (v) a grenade launcher;

(C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of-

- (i) an ammunition magazine that attaches to the pistol outside of the pistol grip;
- (ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;
- (iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand



- without being burned;
- (iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and
- (v) a semiautomatic version of an automatic firearm; and
- (D) a semiautomatic shotgun that has at least 2 of-
  - (i) a folding or telescoping stock;
  - (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
  - (iii) a fixed magazine capacity in excess of 5 rounds; and
  - (iv) an ability to accept a detachable magazine.

And the regulation:

27 CFR section 178.11

Semiautomatic assault weapon. (a) Any of the firearms, or copies or duplicates of the firearms in any caliber, known as:

- (1) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),
- (2) Action Arms Israeli Military Industries UZI and Galil,
- (3) Beretta Ar70 (SC-70),
- (4) Colt AR-15,
- (5) Fabrique National FN/FAL, FN/LAR, and FNC,
- (6) SWD M-10, M-11, M-11/9, and M-12,
- (7) Steyr AUG,
- (8) INTRATEC TEC-9, TEC-DC9 and TEC-22, and
- (9) Revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;

(b) A semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of--

- (1) A folding or telescoping stock,
- (2) A pistol grip that protrudes conspicuously beneath the action of the weapon,
- (3) A bayonet mount,
- (4) A flash suppressor or threaded barrel designed to accommodate a flash suppressor, and
- (5) A grenade launcher;

(c) A semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of--

- (1) An ammunition magazine that attaches to the pistol outside of the pistol grip,
- (2) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer,
- (3) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned,
- (4) A manufactured weight of 50 ounces or more when the pistol is unloaded, and

- (5) A semiautomatic version of an automatic firearm; and

(d) A semiautomatic shotgun that has at least 2 of--

- (1) A folding or telescoping stock,
- (2) A pistol grip that protrudes conspicuously beneath the action of the weapon,
- (3) A fixed magazine capacity in excess of 5 rounds, and
- (4) An ability to accept a detachable magazine.

Semiautomatic pistol. Any repeating pistol which utilizes a

portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

Semiautomatic shotgun. Any repeating shotgun which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

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The definition of "semiautomatic assault weapon" is the heart of the law. It is also sure to be in court, as it has language that has already been voided in previous challenges to other assault weapon ban laws. In the 6th circuit court of appeals decision in Springfield Armory v. Columbus, 29 F.3d 250 (6th Cir. 1994), that court struck down a ban on listed guns very similar to this, as well as a ban on "copies" as being vague. That court suggested a criteria test, also in this law, would pass muster under the standards they were applying. The Colorado Supreme court decision in Robertson v. Denver, 874 P.2d 325 (Colo. 1994), a challenge to the city of Denver assault weapon ordinance, also struck down one of the "assault pistol" criteria here, guns derived from automatic weapons, as being too vague. The court said it was unreasonable to expect gun owners to know or research the design history of their guns. The court in the Columbus case agreed with that logic, and also struck down a similar clause of the Columbus ordinance. Both this law, and the Denver and first Columbus ordinances are based, more or less, on the California Roberti-Roos assault weapons law.

Additionally, some of the "listed" guns either aren't semi-autos (e.g., the "Steyr AUG" is a machine gun, the semi-auto is the AUG-SA), or aren't the names of guns sufficient to identify them. For example, the "Colt AR-15"; no such gun was ever made by Colt, the only gun ever made whose name was "AR-15" that I have been able to track down was the first prototype M-16 machine guns made by the ArmaLite division of Fairchild. Some M-16 machine guns were marked "AR-15 Model 614"; early Colt made semi-auto rifles are marked "AR-15 Model SP1". No Colt gun was ever called just "AR-15", to my knowledge. The "Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models)" clause is gibberish. All of these either don't ban anything, or are too vague to be enforceable. BATF apparently agrees, they have approved the sale of, as non "semiautomatic assault weapons", AR type rifles, including ones made by Colt, that have only one bad feature, a pistol grip. They have approved the sale of a SWD M11/9 gun, called the PM11/9, which is the same as the banned gun except it has an unthreaded barrel, and a 10 round magazine. It also has a different way of latching

the mag than the M11/9. Likewise Intratec has gotten approval for a version of the TEC-22 called the "Sport 22", that doesn't have a threaded barrel, and comes with a 10 round magazine. Intratec has also gotten approval for the AB10, a pistol that is essentially the

TEC-DC9M, except that it has no threads. The DC9 type, with its barrel shroud, is apparently successfully banned. I am unsure why the slide on most pistols (except perhaps the Beretta 84, 85 and 92

and similar copies) is not a "shroud". But what do I know. AK and

AKM copies, mutilated so as to not appear to be of the semiautomatic assault weapon type (see the discussion of 922(r), above) were also imported after 9/13/94. As were sporterized copies of the HK91, from Greece and Portugal. Inclusion on the list, even when the model actually exists, is meaningless, as banning "copies" is unconstitutionally vague, according to the 6th circuit in the Columbus case, and one need only change it a bit, and change the actual name, and it is off the list.

The key part of this definition is the generic criteria part; banning pistols, shotguns and rifles by features. For instance, in

order for a semi-auto rifle to be banned, if it is not on the list, it must be fed by a detachable magazine (and apparently not a belt, for instance) and it must have two or more of the listed features. This is the part of the law to be careful of.

Thus an AR-15 type rifle with only one feature is OK. And an AR-15 stripped receiver only, although defined as a "firearm" by the Gun Control Act (18 U.S.C. section 921(a)(3)(B)), is not a "semiautomatic assault weapon" until it has two or more of the listed features. Having the gun be complete as to parts, but unassembled will also meet the criteria to be a "semi-automatic assault weapon" and either grandfather the gun, if done before the law took effect, or if after, get the owner in trouble. And if it is made into such an item, after the effective date of the law, by adding the two or more of the listed features to it, it must be marked in accordance with section 923(i), and it is illegal for a civilian to possess it, or to make it. As a practical matter, if the stripped receiver was made before the law took effect it will be hard for BATF to prove when it was assembled, before or after the ban. However BATF did their annual compliance inspections at a number of AR rifle and receiver makers right after the ban became

law, to record the serial numbers of ungrandfathered stripped receivers they had in inventory, even though they were made before the law took effect.

Note also that this law bans some NFA weapons, for example the fact that the Street Sweeper and Striker 12 were re-classified as "destructive devices" doesn't exempt them from being banned entirely for future manufacture for civilian sale. Likewise making

an NFA weapon (like a short barreled rifle) out of all imported parts, to avoid section 922(r), doesn't avoid section 922(v), and that former loophole is closed, at least to guns that would be both banned from import, and are in such a configuration as banned under section 922(v). However one could still turn their imported MAK-90 into a short barreled rifle, and have the pistol grip type furniture on it; as long as it still didn't have a bayonet lug, threaded muzzle and so on. Only one bad feature would be OK in that case.

Magazine capacity is irrelevant, as to rifles. It is perfectly OK to put a 30 round AR magazine in a post-ban made AR with only one bad feature, and which is thus not a semiautomatic assault weapon. Doing so does not make it a semiautomatic assault weapon, if it wasn't one before. The only time mag capacity matters is to remove guns from the purview of the law. If a gun is a semi-auto that takes a detachable mag, but for which there are no mags holding more than 5 rounds, (or which has somehow been modified to not accept mags holding more than 5 rounds), it is not an assault weapon, just as a gun with a fixed mag is not an assault weapon.

FFL dealers may still buy assault weapons, for sale to law enforcement officers, or entities. They have to give the dealer they are buying from a statement that the weapon is being acquired for that purpose. They may not keep it when they give up their FFL; it is illegal for civilians to possess these guns. ATF also takes the position that it is illegal for FFL dealers to acquire assault weapons for any other purpose than sale to approved entities; for example they may not acquire them for the purpose of selling off the parts as spares for other guns. Nor may they acquire the guns for the purpose of stripping them of their evil features and re-selling them as non assault weapons. However, the purpose for acquisition is one thing, and what happens later is another. I see nothing prohibiting a dealer who acquired assault weapons for law enforcement sale, who is later going out of business, from removing the bad features from the gun and keeping it, or selling it. Or stripping the parts and selling them. Assuming the gun is banned by features (as 99% of assault weapons are) once the features are gone, so is the assault weapon. Just because the receiver will have a date, and a "Law enforcement government entities only" marking, does not make it an assault weapon. And the absence of such markings does not insure it is a non-assault weapon.

And finally, the marking requirement.

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18 U.S.C. section 923(i)

. . . The serial number of any semiautomatic assault weapon manufactured after the date of the enactment of this sentence

shall clearly show the date on which the weapon was manufactured.

And the regulation:

Section 178.92 Identification of firearms, armor piercing ammunition, and large capacity ammunition feeding devices.

\* \* \*

(a)(2) Special markings for semiautomatic assault weapons, effective July 5, 1995. In the case of any semiautomatic assault weapon manufactured after September 13, 1994, the frame or receiver shall be marked ``RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY'' or, in the case of weapons manufactured for export, ``FOR EXPORT ONLY,'' in the manner prescribed in paragraph (a)(1) of this section.

(3) Exceptions.

(i) Alternate means of identification. The Director may authorize other means of identification of the licensed manufacturer or licensed importer upon receipt of a letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

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Note: The date of enactment of the Crime Bill is September 13, 1994, any semiautomatic assault weapon made after that date needs to have the date of making marked on it. This does not apply to firearms that are not semiautomatic assault weapons, for instance a stripped AR receiver, or a post-ban AR with only one bad feature.

Those need not be marked with a date. However several makers of AR type guns have changed the receiver markings to denote ones made after the ban.

What about replacing parts on a grandfathered weapon?

This is a subject of interest, and as usual ATF has come through with an answer, even if they made it up...

Although not in the regulations (yet, it may well be whenever ATF publishes final regs for the Crime Bill), in the Q&A section of the new ATF "Yellow book", the following exchange occurs (p. 112):

"(07) - Are replacement parts for grandfathered semiautomatic assault weapons and large capacity ammunition feeding devices subject to regulation under the law?

No. Parts may be replaced in grandfathered semiautomatic assault weapons and grandfathered feeding devices without violating the law. However, if the frame or a receiver for a semiautomatic assault weapon is defective, the replacement must be made by the weapons manufacturer or importer. The

replacement must be marked with the same serial number as the original receiver, and the original receiver must be destroyed. However, a manufacturer or importer who is unable to mark the replacement receiver with the same serial number as the original receiver may seek a marking variance in accordance with 27 CFR 178.92. In addition, the permanent records of the manufacturer or importer should indicate that the receiver for the weapon has been replaced."

What do you do if the maker of your weapon is overseas, and the importer is defunct? Ask ATF. I am sure they can come up with something.